

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION**

KAREN MCNEIL, *et al.*,

Plaintiffs,

v.

COMMUNITY PROBATION SERVICES,
LLC; *et al.*,

Defendants.

Case No. 1:18-cv-00033

Judge Campbell/Magistrate Judge Frensley

JURY DEMAND

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO SUBSTITUTE

Plaintiffs file this reply to make just two points. First, PSI asserts that Plaintiffs should not be permitted to substitute Ms. Mitchell's estate with respect to Ms. Mitchell's § 1983 damages claims against the company because the Sixth Circuit held that Plaintiffs cannot obtain damages from a private company sued in its official capacity. But the question of whether Plaintiffs can obtain damages from PSI for their § 1983 claims and whether PSI is properly named as a Defendant in the § 1983 damages claims are different questions. PSI did not argue in their summary judgment motion that they should be dismissed from the § 1983 damages claims, and their arguments on that point are inappropriate in response to Plaintiffs' motion to substitute.

CPS Defendants *did* move to dismiss Plaintiffs' § 1983 damages claims against *that* company, and Plaintiffs explained in response that the Court is not required to dismiss CPS as a named Defendant to the constitutional damages claims, and why the relevant factors weigh in favor of keeping CPS as a named Defendant to those claims. *See M.S. ex rel. Hall v. Susquehanna Twp. Sch. Dist.*, 43 F. Supp. 3d 412, 319 (M.D. Pa. 2014) (noting that "a court is not *required* to dismiss [redundant] official capacity claims," and courts routinely exercise their discretion to maintain duplicative or redundant claims at the motion-to-dismiss stage where such claims are valid and dismissing them "will serve no laudable purpose" (internal quotation omitted)); *Doe v. Corr. Corp.*

of Am., No. 3:15-CV-68, 2015 WL 4067765, at *3 (M.D. Tenn. July 2, 2015) (quotations omitted) (citing multiple cases in which courts declined to dismiss official-capacity claims as redundant against the government entity that was also a named defendant); *see generally* Dkt. 387 at 43–47 (explaining that there is no prejudice to CPS of being named in the claims, and the lack of an employer-employee relationship between the County and the company constitutes good reason to keep the company as a named Defendant to those claims to make clear that CPS will continue to have discovery obligations relevant to those claims). All of the practical concerns Plaintiffs articulated for keeping CPS as a named Defendant to the § 1983 damages claims despite the fact that Plaintiffs cannot recover damages directly from the company apply equally to PSI. In any event, a motion to substitute is not an appropriate context for considering dismissing PSI from those claims, especially in light of the fact that PSI had an opportunity to raise that issue in a dispositive motion at the appropriate time and chose not to do so.

Second, PSI expresses confusion about the claims for which Plaintiffs are seeking to substitute Ms. Mitchell’s estate. For clarity, Plaintiffs are seeking to substitute Ms. Mitchell’s estate for Counts 7, 11, 17, 21, and 23 of the Second Amended Complaint. They are not seeking to substitute her estate on Count 2 (Ms. Mitchell’s RICO claim for damages). Plaintiffs inadvertently omitted reference to Count 17 (Ms. Mitchell’s unjust-enrichment claim for damages) in their motion to substitute. Like her other state-law claims, Ms. Mitchell’s unjust-enrichment claim survives because it is a “wrong” under Tennessee’s broad survivorship statute. Tenn. Code Ann. § 20-5-102.

Dated: February 2, 2021

Respectfully Submitted,

/s/ Elizabeth Rossi .

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CERTIFICATE OF SERVICE

I certify that on February 2, 2021, I electronically filed the foregoing using the CM-ECF System, which caused notice to be sent to all counsel of record who are registered with the CM/ECF system, including the following Counsel for Defendants:

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s/ Elizabeth Rossi